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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 477

RICHARD HUSTY AND CHARLES LAUREL,
PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1930

CERTIORARI GRANTED NOVEMBER 24, 1930

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(35,399)

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IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

No. 3446, Criminal

THE UNITED STATES

vs.

RICHARD HUSTY and CHARLES LAUREL

INDICTMENT—Filed Mar. 5, 1930

The Grand Jurors of the United States, duly selected, impaneled, and sworn to inquire in and for the Southern Division of the Western District of Michigan, upon their oaths do present and say:

Transportation Count

Count I

That heretofore and on or about, to wit, the 10th day of December, A. D. 1929, at, to wit, the City of Grand Rapids, in the County of Kent, in the State of Michigan, in said division of said district, and within the jurisdiction of this Court, Richard Husty and Charles Laurel then and there unlawfully did transport, namely, over and upon the public highways of the County of Kent and Streets of said city of Grand Rapids in said division and district, in an automobile, to wit, a Graham Paige Coupe certain intoxicating liquor, namely, spirituous liquor to wit, more or less, of whiskey so called, which said liquor then and there contained one-half of one per centum and more of alcohol by volume, and then and there was fit for use and [fol. 2] for beverage purposes, which said transportation then and there was prohibited and unlawful by virtue of the provisions of the National Prohibition Act; as amended.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

attorney and federal prohibition agent should not be restrained from making any use of the things found and information gained as a result of said search; and why such other relief should not be granted to petitioner as this Court shall deem just.

Richard Husty, Charles Laurel, Petitioners. P. F. Parrott, Atty. for Petitioners.

[fol. 5] IN UNITED DISTRICT COURT

AFFIDAVIT OF CHARLES LAUREL IN SUPPORT OF MOTION TO SUPPRESS

Charles Laurel being first duly sworn says that he is one of the defendants herein; that he has read the attached petition to suppress the evidence and that same is true.

That on the 10th day of December, 1929, he was arrested by one Arthur Scully, a Federal Prohibition Agent, upon one of the public streets in the city of Grand Rapids, Michigan.

That at the time and before said arrest affiant had not committed a misdemeanor or felony; that affiant was not at said time a fugitive from justice.

Affiant further says at the time of said arrest said Arthur Scully searched the automobile in which affiant was seated without a search warrant.

Affiant further says that said Arthur Scully arrested said affiant without due cause and searched said automobile without an honest belief based on reasonable grounds that the same contained contraband liquor.

Further affiant saith not.

Charles Laurel.

Sworn to before me and subscribed in my presence this 10th day of March, A. D. 1930. Julius J. Herscher, Notary Public, Kent County, Mich. My com. expires Nov. 2, 1930.

[fol. 6] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RICHARD HUSTY IN SUPPORT OF MOTION TO SUPPRESS

Richard Husty being first duly sworn says that he is one of the defendants herein; that he has read the attached petition to suppress the evidence and that same is true.

That on the 10th day of December, 1929, he was arrested by one Arthur Scully, a Federal Prohibition Agent, upon one of the public streets in the city of Grand Rapids, Michigan.

That at the time and before said arrest affiant had not committed a misdemeanor or felony; that affiant was not at said time a fugitive from justice.

Affiant further says at the time of said arrest said Arthur Scully searched the automobile in which affiant was seated without a search warrant.

Affiant further says that said Arthur Scully arrested said affiant without due cause and searched said atuomobile without an honest belief based on reasonable grounds that the same contained contraband liquor.

Further affiant saith not.

Richard Husty.

Sworn to before me and subscribed in my presence this 10th day of March, A. D. 1930. Julius J. Herscher, Notary Public, Kent County, Mich. My com. expires Nov. 2, 1930.

IN UNITED STATES DISTRICT COURT

RULE TO SHOW CAUSE ON MOTION TO SUPPRESS EVIDENCE

This matter being opened to the Court by P. F. Parrott, Attorney for the Petitioners, and the Court having considered the verified petition of Richard Husty and Charles [fol. 7] Laurel, and the affiants filed in support thereof.

It is on this 11th day of March, 1930, ordered that Fred C. Wetmore, United States Attorney for the Western District of Michigan Southern Division, and Arthur Q. Scully, Federal Prohibition Director for said district, show cause

before this Court in the post office building in the city of Grand Rapids, on the 15th day of March, A. D. 1930, at a time that the Court can hear the same, why said United States Attorney and said Federal Prohibition Director should not be restrained from using in any way any information gained as a result of the search made without warrant; and why the things seized under color of law should not be returned to petitioners.

And it is further ordered that copies of this rule and of said petition and affidavits, which be read upon return of this rule, be served upon said United States Attorney and said Federal Prohibition Director.

Fred M. Raymond, United States District Judge.

In United States District Court

Findings of Court for Order Denying Motions—Filed March 12, 1930

March 12, 1930.

Mr. Orrie J. Sluiter, Clerk U. S. Court, Grand Rapids, Mich.

No. 3446, U. S. vs. Husty

Dear Sir: An order may be entered in the above entitled cause denying the petition to suppress evidence and all other relief prayed for by said petition.

Yours very truly, Fred M. Raymond, District Judge.

[fol. 8] In United States District Court

Demurrer—Filed Mar. 12, 1930

Now comes the defendants, by their Attorney, P. F. Parrott, and demur to the information, indictment and paper writing purporting to disclose the offense herein alleged for the following reasons:

1. That said information, indictment or paper writing does not state facts sufficient to contribute an offense under the laws of the United States.

2. That said information, indictment or paper writing does not state facts sufficient to constitute an offense under the National Prohibition Act, as amended.

5. The second count is an indictment which contravenes Section nine (IX) of Article one (I) of the Constitution of the United States of America as being ex post facto.

P. F. Parrott, Attorney for Defendants.

In United States District Court

Motion to Quash—Filed March 12, 1930

Now comes the defendants and move the Court for an order quashing the information, indictment, or paper writing purporting to disclose the offense herein alleged for the following reasons:

1. That the evidence upon which this prosecution is based was obtained by virtue of an unlawful search and seizure.

2. That the evidence upon which this prosecution is based was secured by an infraction of the provisions of the fourth amendment to the Constitution of the United States.

[fol. 9] 3. That the evidence upon which this prosecution is based was secured by an infraction of the provisions of the fifth amendment to the Constitution of the United States.

4. The second count is an indictment which contravenes Section nine (IX) of Article one (I) of the Constitution of the United States of America as being ex post facto.

P. F. Parrott, Attorney for Defendants.

In United States District Court

Motion for Separate Trial—Filed March 12, 1930

Now comes the defendant, Richard Husty, and moves the Court for an order for a separate trial herein upon the following ground:

1. That the evidence will show that the defendant Laurel fled from the scene of the arrest which would render such testimony highly prejudicial to the defendant, Husty.

P. F. Parrott, Attorney for Defendant, Richard Husty.

[fol. 10] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO SUPPRESS, ETC.—Entered March 12, 1930

Motions having heretofore been filed on the part of the defendants to suppress the evidence seized herein, and a further motion for finding of facts and law, and further motion to quash and a further motion for separate trial, and demurrer, all having been considered by the Court, It Is Ordered that said motions be and they are each hereby denied.

IN UNITED STATES DISTRICT COURT

VERDICT OF JURY—Rendered March 12, 1930

This cause being for trial and defendants present, the following jury was duly drawn and sworn, viz.: Arthur E. Wells, Carl A. Reyburn, Sidney L. Vaughn, Harold B. Carpenter, John Lake, Ora A. Porter, Archie Oliver, Peter Bauer, Andrew Larsen, Edward Rawlings, Edward Eriksen, and Ora A. Avery. The jury sat together in the jury seats and heard the proofs and allegations of the parties in part, whereupon counsel for the defendants, in the absence of the jury, renewed his motion to suppress the evidence seized herein and the Court, after hearing counsel for the respective parties thereon orders that said motion be denied, whereupon the jury, after resuming their seats, heard the conclusions of the proofs and allegations of the parties, the arguments of counsel and the charge of the Court, and retired from the bar thereof in charge of an officer of the Court duly sworn for that purpose, to consider of their verdict to be given and after being absent for a time return into Court and say upon their oaths that they find the defendants guilty in manner and form as the government have in their indictment in this cause alleged and complained against them.

In this cause, it is ordered by the Court now here that said defendants be remanded to the custody of the marshal [fol. 11] and that said defendant Richard Husty be released from custody on entering into a recognizance for appearance for sentence in the sum of $10,000.00, and that said defendant Charles Laurel be released from custody on entering into a recognizance for appearance for sentence in the sum of $2500.00.

In United States District Court

Sentence of Richard Husty—Entered on March 13, 1930

The defendant having been heretofore convicted and found guilty of the charges in said indictment contained and being now brought into Court and placed at the bar thereof, the Court now sentences him the said Richard Husty, to be imprisoned in the United States Penitentiary at Leavenworth, Kansas, subject to the rules and regulations of that institution, for and during the term and period of five years, from and including the 13th day of March, A. D. 1930; and that he pay to the United States a fine of Three Thousand Dollars ($3000.00), the United States to have execution thereof.

[fol. 12] In United States District Court

Sentence of Charles Laurel—Entered on March 13, 1930

The defendant having been heretofore convicted and found guilty of the charges in said indictment contained and being now brought into Court and placed at the bar thereof, the Court now sentences him the said Charles Laurel to be imprisoned in the United States Industrial Reformatory at Chillicothe, Ohio, subject to the rules and regulations of that institution, for and during the term and period of one year and six months, from and including the 13th day of March, A. D. 1930.

In United States District Court

Alternative Motion re Exceptions—Filed Mar. 14, 1930

To Honorable Fred M. Raymond, District Judge:

Now comes the defendants in the above entitled action and move the Court for an order incorporating into the record

of these proceedings the exceptions taken by counsel for the defendants at the time the defendant Richard Husty, one of the defendants herein, was sentenced by this Court and the reason stated by counsel for said exceptions and that said exceptions show the grounds stated by counsel at the time as being "that the sentence of the Court is excessive, based on a third conviction and that said excessive sentence is contrary to law and contravenes Section 9 of Article 1 of the Constitution of the United States of America."

And now come the defendants through their attorney and further move the Court that in the event the Court should overrule that part of this motion relating to counsel's exceptions to the sentence of the Court and the reasons given by counsel for said exceptions, that the Court permit and allow the contents of same to constitute and be an amendment to defendants' assignments of error and to be constituted [fol. 13] and be known as assignment No. 32 of the defendants' assignments of errors.

Counsel for the defendants move the Court that an order and finding upon the within motion be made with such despatch that the defendants, through their counsel, can perfect their appeal or error proceedings according to the provisions of the oath of the bond in this case made and provided.

Respectfully submitted.

P. F. Parrott, Attorney for Defendants.

Copy of motion received and notice that counsel will present same as soon as the Court's attention can be directed hereto.

L. H. Grettenberger, Asst. U. S. District Atty.

In United States District Court

Motion for New Trial.—Filed Mar. 13, 1930

Now comes the defendants and move the Court for a new trial in the above entitled action for the following reasons.

1. That the verdict of the jury is contrary to law.

2. That the verdict of the jury is not sustained by sufficient evidence.

3. For errors of law occurring at the trial.

4. That the trial court admitted prejudicial evidence over the objection of counsel for the defendants.

5. That the court permitted the evidence to be within the sight of the jury prior to the empaneling of the jury.

6. That the evidence was permitted to be and remain in the court room in the sight of the jury during the course of the trial.

[fol. 14] 7. For errors of law occurring at the trial.

8. That the verdict of the jury was not sustained by the evidence.

9. That the Government did not prove all of the material allegations of the indictment.

10. That the verdict of the jury should have been returned for the defendants.

11. Failure of the court to charge the jury as requested.

12. That the trial court admitted evidence and exhibits which were prejudicial to the defendants over the objections of counsel.

13. That the trial court admitted the exhibits in evidence while the identifying witness was still seated in the witness chair and before counsel had been given an opportunity of cross-examination.

14. That the trial court refused to grant the defendant Husty a separate trial, which was prejudicial to the defendant Husty.

15. For other errors occurring at the trial prejudicial to defendants and apparent upon the face of the record.

P. F. Parrott, Attorney for Defendants.

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—
Filed Mar. 13, 1930

Now comes the defendants, through their attorney, and move the Court for a judgment of acquittal in favor of the defendants notwithstanding the verdict of the jury.

P. F. Parrott, Attorney for Defendants.

[fol. 15] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR NEW TRIAL, ETC.—Entered March 13, 1930

Motion having been filed on the part of the defendants for a new trial and motion for non obstante veredicto, and the Court, after considering said motions orders that same be denied.

IN UNITED STATES DISTRICT COURT

CITATIONS OF ERROR—Filed Mar. 13, 1930

The defendants herein set out below the citations of error complained of as prejudicial to defendants upon the trial of the foregoing cause as being an invasion of the defendants' constitutional rights and an invasion of defendants' rights to a fair and impartial trial.

No. 1. That the trial court erred in overruling the defendants petition to suppress the evidence upon the motion of the attorney for the defendant at the conclusion of plaintiffs case upon the hearing of the petition to suppress the evidence, which was prejudicial to the defendants herein.

No. 2. That the court committed prejudicial error in overruling the motion of the attorney for the defendant to order a suppression of the order at the conclusion of the defendants case and after said matter was finally submitted to the court.

No. 3. That the trial court committed prejudicial error in overruling the demurrer of the defendants.

No. 4. That the trial court committed prejudicial error in overruling the defendants motion to quash.

No. 5. That the trial court committed prejudicial error in overruling the defendant Richard Husty's motion for separate trial.

No. 6. That the trial court committed prejudicial error in overruling the motion of defendant for finding of law and [fol. 16] of fact at the conclusion of and after judgment upon defendants petition to suppress the evidence.

No. 7. That the trial court erred in admitting any evidence to be introduced upon the trial of this cause over the objection of counsel for defendants, thus prejudicing the rights of defendants.'

No. 8. The trial court committed prejudicial error in overruling the motion of the defendants for a directed verdict at the close of the Government's case upon the merits.

No. 9. That the trial court committed prejudicial error in admitting into evidence over the objection of counsel for defendants the exhibits introduced by the plaintiff while the identifying witness was still seated in the witness chair and subject to cross-examination.

No. 10. That the trial court committed prejudicial error in overruling the motion of defendant to direct the jury to return a verdict for defendants.

No. 11. That the trial court committed prejudicial error in overruling the motion of defendant at the conclusion of the defendants' case.

No. 12. That the trial court committed prejudicial error in overruling the renewal of the motion of the defendants upon motion to quash.

No. 13. That the trial court committed prejudicial error on the overruling of the defendants' renewal of the demurrer filed herein.

No. 14. That the trial court committed prejudicial error in overruling the defendants in their requests to charge the jury after argument.

No. 15. That the court committed prejudicial error in making a rule that whatever requests to charge the jury that defendants attorney desired to make and have incorporated in the record as being overruled by the court, would have to be completed and in the hands of the official reporter before the jury returned with its verdict.

No. 16. That the court committed prejudicial error in not allowing defendants attorney a reasonable length to time to prepare and present his requests to charge the jury after argument.

No. 17. That the trial court committed prejudicial error by summarily overruling defendants requests to charge the jury before same were presented or submitted to the Court.

[fol. 21] IN UNITED STATES DISTRICT COURT

MOTION FOR SETTLEMENT OF BILL OF EXCEPTIONS—Filed April 3, 1930.

Now comes the defendants Richard Husty and Charles Laurel and moves the Court to settle the bill of exceptions herein with amendments as follows:

1. At the conclusion of the hearing on the petition to suppress on page 47 should be noted the overruling of said petition by the Court and the exceptions of the defendant thereto.

2. The transcript upon the trial on page two where the Court overrules three motions and grants counsel an exception a notation to be inserted that the motions referred to are Demurrer, Motion to Quash the Indictment and Motion for Separate Trial.

3. On page 3, at the top of the page, the language of my motion should be changed to read "and ask for a return of the goods, etc."

4. On page 21 of the record at the conclusion thereof should be set up the Court's Sentence with an exception saved for the defendants.

P. F. Parrott, Attorney for Defendants.

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR EXTENSION OF TIME TO SETTLE BILL OF EXCEPTIONS AND DENYING PROPOSED AMENDMENTS NOS. 1, 2 AND 4 AND ORDER GRANTING PROPOSED AMENDMENT NO. 3—Entered April 3, 1930

Motion having been made in this case for extension of time to settle bill of exceptions, the Court heard the arguments of counsel, whereupon it was ordered by the Court now here that said motion be and the same hereby is denied. [fol. 22] This matter coming on for hearing further upon motion of defendant- to settle bill of exceptions in certain proposed amendments, the Court heard the arguments of

counsel, whereupon it is ordered by the Court now here that proposed amendments Nos. 1, 2 and 4 be and the same hereby are denied, and that proposed amendment No. 3 be and the same hereby is granted.

IN UNITED STATES DISTRICT COURT

MOTION TO SETTLE, SIGN AND ALLOW BILL OF EXCEPTIONS—Filed April 4 1930

Now comes the defendant Richard Husty and moves the Court for an order settling the bill of exceptions herein as presented in narrative from and moves the Court to sign and allow the same as defendants' bill of exceptions herein.

P. F. Parrott, Attorney for Defendants.

To the United States District Attorney:

Please take Notice that the above motion will be presented before the Honorable Fred M. Raymond, district judge, on the 4th day of April, 1930, so soon as the Court's attention can be directed hereto.

P. F. Parrott, Attorney for Defendants.

Received copy of the above motion this 4th day of April, 1930.

L. H. Grettenberger, Assistant United States District Attorney.

[fol. 23] IN UNITED STATES DISTRICT COURT

Bill of Exceptions—Filed April 4, 1930

ARTHUR Q. SCULLY, being first duly sworn by the clerk on behalf of the Government, on motion to suppress the evidence, testified as follows:

Mr. Parrott: I made request before lunch and we had a stipulation that you would arrange for a reporter in Court.

The Court: You will have to speak louder, this a very hard room to hear in.

Mr. Parrott: I want to know whether a reporter has been retained for the purpose of this proceeding.

The Court: The reporter is here now.

Mr. Parrott: I would like to have a full report of the proceedings, that was my inquiry, if that is understood——

The Court: The reporter is here taking the testimony now; so you need not have any concern on that subject.

Direct examination.

By Mr. Grettenberger:

My name is Arthur Q. Scully, and I am the deputy administrator for the Western District of Michigan, and was during December of this last year. I have been deputy administrator since December, 1926, and before that since 1920 I worked on the prohibition force, and have during that time been assigned to work in the Western District of Michigan. I have known Mr. Husty since 1922. My reason for knowing him at that time was I arrested him in 1922 for violation of the National Prohibition Act. He was transporting liquor at that time.

Q. And did you make any arrest of him for the violation of the prohibition law after that?

Mr. Parrott: I object to arrests, your Honor.

Q. Or any convictions?

Mr. Parrott: I object to convictions on the ground that the record is the best evidence.

The Court: I don't understand the question. Just read the question, Mr. Reporter.

(Question read as follows:) "Q. And did you make any arrest of him for the violation of the prohibition law after that, Or any convictions?"

The Court: I don't understand the question just read in a rational way. I think we had better have it withdrawn and a new question put.

[fol. 24] I came in contact with Mr. Husty after 1922 through my official position as agent or prohibition administrator. Mr. Husty was arrested again in 1928 for the violation of the liquor law.

Mr. Parrott: I move to strike the answer out as being based on hearsay.

By the United States Marshal of this court.

Mr. Parrott: I would like a ruling.
The Court: The answer will stand.
Mr. Parrott: Exception.

In my official position as prohibition administrator here I have learned what Mr. Husty has been doing between the time of 1922 to 1928 and since then.

Mr. Parrott: Objected to, if your Honor please, as being entirely immaterial on the question of illegal search; and hearsay. He must know. What he has learned—that implies that he learned it through hearsay. I object to the form of the question.
The Court: I will take the answer.

A. Yes, sir.

Mr. Parrott: I renew my objection.
The Court: The objection has been ruled on once, I think that is sufficient for your purpose. Proceed.

(Question read.)

I did, yes, sir. He has been a bootlegger, and so far as I know his activities have been confined to Grand Rapids in this Wes-ern District. I could not say whether or not he has been transporting liquor during that period. Around the 10th of December, 1929, I arrested defendants, Richard Husty and Charles Laurel, in this case, in the City of Grand Rapids, Michigan, on Jefferson Avenue, in the vicinity of Pleasant Street, about eight P. M., and I had information relative to him that night.

Q. What was the nature of your information?

Mr. Parrott: I object to it, if it is going to be hearsay.
The Court: Take the answer.

[fol. 25] I received information that Dick Husty had two loads of liquor parked in the vicinity of Pleasant and Jefferson; that a Graham-Paige coupe was parked on Jefferson just north of Pleasant, and that a Studebaker sedan was parked on Pleasant just east of Jefferson.

Mr. Parrott: I move the answer be stricken out.
The Court: The answer will stand.
Mr. Parrott: Exception.

Detailed information was given that the Graham-Paige car was about 150 feet from the corner of Pleasant Street, north, on Jefferson. It said the car had a load of liquor, in which there was no specific quantity specified. Then I went to this place after receiving that information and found such a Graham-Paige car, but did not find a Studebaker car. I do not know whether there was a car there. This Graham-Paige was located about 150 or 170 feet north from the corner of Pleasant Street on Jefferson. It was on the east side of the street. Mr. Husty was not there at that time, but he came later and Mr. Laurel and another man were with him. Mr. Husty got in behind the wheel, in the driver's seat, turned on his lights, started his motor, started to pull out in traffic, moved about a foot, and stopped. I stopped him. Laurel was in the car with Husty and another man. Laurel and the other man ran—The other man got away.

Mr. Parrott: I move to strike out what the other man did. He is not a party.
The Court: You will rise when you make an objection in this court, always please.
Mr. Parrott: Pardon me.
The Court: The objection will be overruled.
Mr. Parrott: Exception.

I looked for the liquor, I did not count the quantity of bottles there that night.

Mr. Parrott: I move to strike the answer out as not being responsive, if your Honor please.
The Court: Proceed.
Mr. Parrott: Exception.

After I stopped the car Mr. Husty stepped out of the car, stood alongside of the car. Mr. Laurel ran down Jefferson Avenue, and the other man went over to Pleasant [fol. 26] Street. 18 cases of whiskey was found in the car. When I stopped the car I believed the car contained a load of liquor.

Cross-examination.

By Mr. Parrott:

When I went to that automobile about eight o'clock that night I went there because I had a complaint or a tip, as you might call it, and that came to me by word of mouth from a reliable source, and I know that it came from a reliable source at that time. It came from a person in the community upon whose information I could act with prudence. He was not a business man or a bootlegger, but he has given me tips before, and I had acted upon them. I never found one that was not reliable. I have known him about eight years, and my association during eight years had not brought me entirely in direct contact with him, not often.

Q. How often had your contact been with the man from whom you received this complaint since 1922, the date of Mr. Husty's first conviction?

A. What do you mean by "contact"?

Q. I mean either by furnishing you so-called tips or meeting him socially or in a business way?

A. I could not tell you how often. I have seen the man, talked to him, received information from him on several occasions.

I cannot say how many times I have seen him since 1922 either in a business or social way; I might have seen him 500 times.

Q. Five times.

A. (Continuing:) I might be two hundred times out of the way on that.

Q. So when you acted upon his information at this time, it was not based upon a continuous social relation or business relation that you based your honest belief on to depend upon what he told you, is that right?

A. From my experience he usually told the truth.

From my experience he always told the truth, although from 1922 on I might have seen him 500 times. It did not always relate to the business of my office; I mean by that times I met the man on the street, times I was at his office and times he was at mine.

Mr. Grettenberger: I don't see how this is material on the direct examination.

Mr. Parrott: It goes to the——

[fol. 27] The Court: The answer may stand up to this point.

He did not come to my office the day he made this complaint and I did not go to his place. We just met casually. I talked to him over the telephone, in this case and then I later met him. I did meet him personally; it was personal contact. I met him after I talked to him over the phone.

Q. Did you not get this information from the sheriff——

Mr. Grettenberger: I object to that, your Honor, as being incompetent.

The Court: Objection sustained.

Mr. Parrott: If your Honor please, it might become competent, if we can prove later on as we expect to that it did come from a particular source, if I can connect it up; otherwise I will consent it go out.

The Court: The objection will be sustained.

Q. The information that this man gave you, did you inquire from him whether the information he was imparting to you was a matter of actual knowledge to him, or whether it came to him through hearsay?

Mr. Grettenberger: I object to that as incompetent——

Mr. Parrott: It directly follows the case of People v. Kamhout, where the court used that exact language.

The Court: That can be answered by "Yes" or "No." I will take the answer.

(Question read.)

A. Yes.

He did not tell me someone had phoned him.

Q. Did you ask him if he had personal knowledge of the things he was imparting information to you——?

Mr. Grettenberger: I object to that as being incompetent and immaterial.

The Court: It can be answered by "Yes" or "No." I will take the answer.

(Question read.)

Q. What was the answer?

[fol. 28] Mr. Grettenberger: I object to that as being incompetent on the ground——

The Court: I will take the answer.

A. That the liquor was in the car.

I asked him if he had seen it in the car. I am positive the car moved that night after Mr. Husty got in the car because I saw it move. I hadn't gotten out of my car. I was parked directly across the street from it. There were several others in the car with me. My car prior to the time their car started had not started to move across, toward them. Their car moved before I moved.

Q. Who was driving that car?

Mr. Grettenberger: I object to that as incompetent.

The Court: What does the question refer to. Who was driving the Husty car or the Scully car?

Mr. Parrott: I was talking about the Husty car.

The Court: I will take the answer.

A. Mr. Husty.

Q. You don't know whether Mr. Husty knew there was any liquor in the car at that time, do you?

Mr. Grettenberger: I object to that question as to what Mr. Husty knew; I don't see how it is competent, it is not germane to the direct examination; it does not seem to me it is material in this proceeding.

The Court: The question can be answered by "Yes" or "No"; I will take the answer.

A. No.

I didn't know that Husty knew that there was liquor in the car.

The Court: The question has been answered, I think.

There was one conviction in 1922 and one in 1928 in this court.

Q. Now since 1928 you say Mr. Husty has been bootlegging since 1928?

A. Not while he was in jail he was not, but he was a couple days after he got out.

He was bootlegging since he got out of jail. He was sentenced in 1928 to one year, and got out in 1929, in Novem-
[fol. 29] ber, and since then he has been bootlegging. I have arrested him since 1929. I arrested him in December, 1929. I mean in this case. I was prohibition agent from that time on stationed here at Grand Rapids, but I did not arrest him from 1922 until 1928, tried to, but——

From all my experience and the aggressive officer that I am, during those six years I had no evidence sufficient to arrest him. On the night of this raid, on the night of the seizure, I was not with Officer Bos of the Sheriff's Department on an exploratory searching party. I was not with Mr. Bos whereby he was to go with me on this seizure. He did not tell me that he had received this tip over the telephone and ask me to aid him. I had no talk with Mr. Bos at all until after I saw this car.

Q. Did you have any talk with Mr. Bos' Superior Officer, the Sheriff himself?

Mr. Grettenberger: I object to that as incompetent and immaterial.

The Court: Objection sustained.

Mr. Parrott: Exception.

Mr. Bos did not tell me that the Sheriff had told him to assist me in this search and seizure.

Mr. Grettenberger: At this time, your Honor, I ask that the testimony relative to the talk with Mr. Bos be stricken, not being competent, not germane to the direct examination, nor related to the issues.

The Court: I don't think there is any testimony that he talked with Mr. Bos. I think the testimony is all to the contrary.

Mr. Grettenberger: I ask that whatever testimony there is about that talk, be stricken as immaterial, not germane and incompetent.

The Court: I think it may stand.

Q. You searched five or six or seven other cars in that immediate vicinity that night, did you not?

Mr. Grettenberger: I object to that.

Mr. Parrott: Wait a minute, until I finish the question.

Mr. Grettenberger: I beg your pardon.

[fol. 30] It is not true that on the night of this seizure, at or about eight o'clock, that prior and subsequent to the seizure of this particular Graham-Paige car, my men and the Sheriff's deputies and his men under my orders and I searched all of six or seven cars in that immediate vicinity; that is the only car that we searched that night.

Q. You know a fellow by the name of Beecher that lived on Pleasant Street?

A. I do not.

Mr. Grettenberger: I object to that as incompetent.

The Court: It is incompetent, objection sustained.

Mr. Parrott: I didn't get the ruling. It is incompetent, you say?

The Court: It is incompetent, yes.

Mr. Parrott: Exception.

Q. Do you know Sterling Hubbard, Mr. Scully?

Mr. Grettenberger: I can't see how that is competent, it is not germane, it is entirely immaterial.

The Court: I will take the answer, because it calls simply for a "Yes" or "No" answer.

(Question read.)

A. No.

Q. For your information he lives at 354 Fulton Street, and had his car in that immediate vicinity that night, at eight o'clock.

Mr. Grettenberger: I object to that testimony, if your Honor please.

The Court: There is no question pending, so far as that is concerned. No question has been asked.

(Statement of Counsel read.)

Q. And whose car was also searched at that time, by the officers who accompanied you. I will ask you if you remember that occasion.

Mr. Grettenberger: I will object to that as being incompetent.

The Court: Objection sustained.

Mr. Parrott: Your Honor—may it please the court, my purpose was to prove the exploratory character of the search.

A. I knew it was whiskey.

Mr. Parrott: That is a pretty simple question to answer. Will you please read it, Mr. Reporter?

(Question read.)

Mr. Grettenberger: That is pretty indefinite.

The Court: The question is meaningless as read by the Reporter.

[fol. 33] I guess it was the shape, the general shape of the bottle, and from my experience with bottles in the past, whiskey bottles, that I identified these particular bottles as indicating to me, in my mind, that those I saw are the same kind of bottles that I saw before which had whiskey in them.

Q. Who was the party from whom you received the tip that the automobile that you searched was at a certain location where you found it that night?

Mr. Grettenberger: I object to that, it being an incompetent and improper question to ask.

The Court: Objection sustained.

Mr. Parrott: Exception.

Q. I believe in answer to a former question on cross-examination you said that the party from whom you got the information of the place where this automobile was to be and was later found by you, stated it was given to him through some one, am I correct?

Mr. Grettenberger: I object to that, that has not been asked at all, that kind of question was never answered.

Mr. Parrott: I think the record will show that.

Mr. Grettenberger: That question was never asked and never answered.

A. No, I don't remember that question.

Mr. Grettenberger: I object to that question as incompetent and improper, and I ask that the answer be stricken.

The Court: It has been answered.

Mr. Parrott: You say it is not in the record.

Mr. Grettenberger: I do.

Mr. Parrott: Then I want to put that question on cross-examination at this time. (No response.) Withdraw that.

Q. Did you ask the party that give you this tip as to where this automobile would be found that night with liquor in it, and later proved to be the car in question here, did you ask that party where they received their source of information?

Mr. Grettenberger: I object to that as being incompetent. [fol. 34] The Court: I think that has all been covered in your former examination of this witness.

Mr. Parrott: I want this in the record, your Honor.

The Court: I will sustain the objection.

Mr. Parrott: Exception. May I have the last question read, please?

(Question read.)

Q. Just one or two more questions. Did the party that made the complaint to you, or the tip-off as we called it before in this case, receive their information, upon which you acted—I will put it the other way. Withdraw the other question. Where did the party who told you about this particular car in question, upon which you searched that night and found this car in question, where did they receive their source of information, if you know?

Mr. Grettenberger: I object to that, that has all been gone over, in the first place; and in the second place it is incompetent and immaterial.

Mr. Parrott: I rely on the Carroll case.

The Court: I will sustain the objection.

Mr. Parrott: Exception.

Q. Was the tip that the man gave you that night upon which you acted, based on information furnished him by others?

Mr. Grettenberger: Just a moment, that has all been gone over.

Mr. Parrott: I want to be sure that the record is clear, if your Honor please, that is the only purpose of it.

The Court: I think it has already been covered. I will sustain the objection.

Mr. Parrott: Exception.

Q. Whether the source of information that you acted on that night, and on which you searched the car in question was based on information coming to you from an officer?

Mr. Grettenberger: I object to that, that has been covered, it is incompetent.

The Court: Sustain the objection.

Mr. Parrott: Exception.

[fol. 35] At the time of the search the defendant Husty or Laurel, prior to the time they entered the car, did not act in a suspicious manner, and they had not been guilty of a felony to my knowledge, and neither of them were fugitives from justice so far as I know.

Q. You were not looking for them, and your arrest at that time was predicated upon nothing except what you found in the car and the tip you had previous to the search?

A. On the information that I had, yes, I had not found anything in the car when I see Mr. Husty.

At the time he drove the car aside from the violation in this case he was not violating any city ordinance or state law that I know of. Since 1922 I have been watching the defendant Husty at his residence and immediate vicinity, intermittently, in my efforts to prosecute him for violations of the prohibition act.

Q. How often?

Mr. Grettenberger: I object to that as incompetent, irrelevant and immaterial, I don't see how it is material.

The Court: Objection sustained.

Mr. Parrot: We will show whether or not it was an exploratory search.

The Court: Objection sustained.

Mr. Parrott: Exception.

Q. Would you say that your attempts to arrest or investigate the defendant Husty was once a week or more?

Mr. Grettenberger: I object to that as being incompetent and immaterial.

The Court: Objection sustained.

Mr. Parrott: Exception.

Q. I will ask you if you or your deputies ever followed the cars of Mr. Husty or guests of Mr. Husty around his home?

Mr. Grettenberger: I object to that, as being incompetent and irrelevant.

The Court: Objection sustained.

Mr. Parrott: Exception.

Q. I will ask if you did not follow, you or your deputies the cars of Mr. Husty or his friends as they visited his [fol. 36] home, or went about this town with him, since he has gotten out of jail under the conviction of 1928.

Mr. Grettenberger: Just a moment, I object to that question as being an improper question, the contents of the question, as to following guests, or following Husty also, it is improper in that way. Then it is also incompetent and immaterial to the issue.

Mr. Parrott: It is competent for the purpose of showing that all of these searches were of an exploratory character.

The Court: The question involved here is the search of this car upon this particular occasion. I will sustain the objection.

Mr. Parrott: That is all, Mr. Scully.

Mr. Grettenberger: That is all.

Mr. Parrott: At this time I move the court to make a finding granting the petition to suppress the evidence upon the ground that the officer who made the arrest and search did not do so acting upon information received from sources apparently so reliable that a prudent and careful person, having due regard to the right of others would act thereon, nor did he have probable cause to believe that intoxicating liquor was at that time being unlawfully transported in the automobile in question, or in his presence.

And further, that the search was purely of an exploratory character, and based on information secured from

others, not credible persons in the community and known to him as such, such as a prudent person could and would rely and predicate said search upon, and again I move the court to dismiss the defendants and allow the petition to suppress.

The Court: The proofs are closed in this motion, as I understand it?

Mr. Grettenberger: We have no further proof.

Mr. Parrott: I would like a ruling on that and then I may have some proof.

The Court: Upon the record as it now stands, the motion must be denied, upon authority of the Carroll case and others.

Mr. Parrott: Yes, upon authority of the Carroll case? Exception.

I would like to call Mr. Bos.

[fol. 37] Charles Bos, being first duly sworn by the clerk on behalf of the defendants, testified as follows:

Mr. Parrott: Now, if your Honor please, I move that the Government proceed with the witness on direct examination.

Mr. Grettenberger: The Government proofs are closed.

Mr. Parrott: My theory is, if your Honor please, that we are put in the position of proving our defendant innocent under the Constitution, and I am making the motion——

The Court: Your request will be denied, and the motion overruled.

Mr. Parrott: Exception.

Examination by Mr. Parrott:

I am Charles Bos, Deputy Sheriff of Kent County, Michigan, and I am married and 27 years of age; I have lived in Kent County about ten years. I have had occasion at times to aid Mr. Scully in the enforcement of the prohibition laws in Kent County and surroundings.

Q On the 10th day of December, did you accompany him on a search in and about Kent County?

A. I did.

Q. What time did you go with him, what time did you start with him that day?

A. Why, I wouldn't say I started out with him.

Q. What time did you first see or hear from Mr. Scully on the 10th day of December, 1929?

Mr. Grettenberger: Just a moment, I object to that form of the question, "see" or "hear."

The Court: I will take the answer.

About 8:00 P. M. Mr. Scully didn't want us to help him. He was called.

Q. By whom?

Mr. Grettenberger: I object to that unless this witness saw or heard him called.

Mr. Parrott: That is not the question. That has been passed on by the Supreme Court.

Mr. Grettenberger: Let's find out first whether he knows about it, or whether it is hearsay.

The Court: You may inquire.

[fol. 38] By Grettenberger:

I was not present when he was called.

Mr. Parrott: I object to that, he has no right to cross-examine.

The Court: I have already granted him the privilege.

Mr. Parrott: All right, excuse me.

By Mr. Grettenberger:

Q. What you know about whether Mr. Scully was called was merely hearsay?

A. Yes, sir.

By Mr. Parrott:

Q. I did not ask you whether Mr. Scully was called, I asked you whether you was called, and how you happened to go with Mr. Scully that night. Can't you tell us, Mr. Bos?

A. Why, I was called.

Mr. Grettenberger: Your Honor, may I just ask one question.

The Court: I will take the answer to this question.

A. I received a telephone call that there was two loads of liquor coming in on 16, and later on we received a call that this liquor was already in Grand Rapids, and one load was on Jefferson Avenue, just north of Pleasant Street, and the other one was on Pleasant Street, east of Jefferson.

I received that over the telephone, but did not impart that information to Mr. Scully, and no one else imparted to him that information in my presence.

Q. Was it after a while verified to you that someone else had imparted that information that had been given to you?

Mr. Grettenberger: I object to that as incompetent.

The Court: Objection sustained.

Mr. Parrott: Exception.

Q. Do you know whether or not anybody acted upon that information that you secured over the phone?

Mr. Grettenberger: I object to that, it would be incompetent so far as this proceeding goes. The whole case hinges on that.

[fol. 39] The Court: The question can be answered "Yes" or "No."

A. Yes.

Mr. Grettenberger: I object to that question and ask that the answer be stricken.

Mr. Parrott: The question has been answered.

The Court: The question has been answered and the answer will stand.

Q. And what was it that verified to you that the information you secured over the phone had been acted upon?

Mr. Grettenberger: I object to that, that would be immaterial.

Mr. Parrott: How are we possibly going to rebut anything of that character, if we don't put the question in such a direct form that we can apprise the court of what is going on here. We can't certainly be deprived of our defense in this matter.

The Court: The objection will be sustained.
Mr. Parrott: Exception.

Q. On that information that you received over the phone, Mr. Bos, did you take it up with your superior officer, the Sheriff of Kent County?

Mr. Grettenberger: I object to that as being incompetent and immaterial to the issues here involved.
The Court: Objection sustained.
Mr. Parrott: Exception.

Q. In furtherance of your duties as Deputy Sheriff of Kent County, having received a tip that there was a violation of the liquor laws going to take place or had taken place in your jurisdiction, what did you do?

Mr. Grettenberger: I object to what his duties were or what his duties are. That has no bearing on the question of whether Mr. Scully had any right to search the car.
The Court: I don't see how it has any bearing on the question here involved.
Mr. Parrott: Can't you prove under the law the sequence of actions, that it got from him to Scully? Otherwise how [fol. 40] could anyone in any criminal case prove his defense?
The Court: I don't think the question you asked has any bearing upon the sequence which you say you are trying to establish.
Mr. Parrott: The sequence has got to come from its inception to its conclusion. It had its inception from this witness.
Mr. Grettenberger: That remains to be proven.
Mr. Parrott: I am certainly trying to prove it.
Mr. Grettenberger: Here he is asking him if he had the duty to call Scully or to verify that someone else called him, or if he notified his superior officer. I object to what his duties were.
Mr. Parrott: I said "in furtherance of his duties what did he do."
The Court: The objection will be sustained.
Mr. Parrott: Exception.

Q. After you received the phone call, what did you do?

Mr. Grettenberger: I object to that as being incompetent in this case.

The Court: I will take the answer.

After I received the phone call we went out on it, acted on it.

When I say, "we acted upon it," I mean two other deputies.

Q. What is their names?

Mr. Grettenberger: I object to that as being incompetent as to the issues involved in this case here, the question is whether Mr. Scully had a right to search that car, no relationship between this witness, if there are other officers working on that same car, that is another issue.

Mr. Parrott: My purpose, if your Honor please, is to prove that the reason of their starting to go out there on this complaint brought Mr. Scully there, really to aid them, but Mr. Scully being a Federal man he took full charge, and that is the sequence.

Mr. Grettenberger: I don't see how that has any bearing in this case.

The Court: I will sustain the objection.

Mr. Parrott: Exception.

[fol. 41] Q. You went out on that complaint yourself, didn't you, Mr. Bos?

A. With others.

Mr. Grettenberger: I object, that is incompetent——

The Court: It has already been covered. I can see no purpose of recovering a situation of that kind.

Q. And, of course, in the course of that investigation, acting upon that complaint you met Mr. Scully, did you not?

Mr. Grettenberger: I object to that as being incompetent whether he met Mr. Scully.

The Court: I will sustain the objection.

Mr. Parrott: You can answer that——

The Court: I will sustain the objection.

Mr. Parrott: I didn't know you had made a ruling. Exception.

Q. Did you see or aid Mr. Scully on the night of December 10, in the search of an automobile at or near the corner

of Pleasant Street on Jefferson Avenue, on the night of December 10th?

Mr. Grettenberger: I object to that as being incompetent and immaterial.

The Court: I will take the answer.

A. I did.

I talked with Mr. Scully that night about this search and seizure.

Q. What did you say to him and what did he say to you?

Mr. Grettenberger: May I ask just one question, your Honor? Was this before or after the search of the car?

Mr. Parrott: I object to this cross-examination at this time.

The Court: I will take the answer.

A. Well, both.

I talked with Mr. Scully not over three minutes before the search of this car, probably about three minutes in the vicinity of Jefferson and Pleasant street in an automobile. [fol. 42] Q. Did you point out to him where the automobile was on Pleasant Street based on what you had been told over the phone?

Mr. Grettenberger: I object to that as being incompetent and immaterial.

The Court: There is no testimony yet that he pointed out any automobile.

Mr. Parrott: I am asking if he did.

The Court: Read the question, Mr. Reporter.

(Question read.)

It is a double question, it will be stricken.

Mr. Parrott: I will withdraw the question and put it again.

Q. You were at that place at that time as the result of a phone call you had received earlier in the evening that the liquor had been reported to you as coming in on M-16, and later a phone call that it was now in the city of Grand Rapids, and on the east side of Pleasant Street?

Q. Do you know who the party was that phoned you that night, that afternoon?

Mr. Grettenberger: I object to that as being immaterial.
The Court: Objection sustained.
Mr. Parrott: Exception.

Q. Did you inquire as to who the party was that was phoning you and giving you this tip about that car?

Mr. Grettenberger. I object to that, Your Honor.
The Court: Same ruling.
Mr. Parrott: Exception. I want to save an exception to the one just previous to that, I forgot to except.

Q. Did you or not phone to Officer Scully after receiving this tip about this car, apprising him of what they had told you?

Mr. Grettenberger: I object to that as having been gone over, and incompetent.
[fol. 45] The Court: I think that is at least the third time that has been covered, and I will again sustain the objection. We won't waste any more time on that particular matter.
Mr. Parrott: Exception.

Q. You went to the scene of this search and seizure that night, did you not, based upon the information that you had received over the telephone that night?

Mr. Grettenberger: Just a moment, I object to that as being immaterial. I don't see how it bears on the right of Mr. Scully to search that car, what some one else did.
The Court: Objection sustained.
Mr. Parrott: Exception. That is all.
Mr. Grettenberger: That is all.
Mr. Parrott: I would like to recall Mr. Scully.
Mr. Grettenberger: Just a moment. Do you recall him as your own witness?
Mr. Parrott: That is true, we accept him as our witness.

Arthur Scully again on the stand.

Examination by Mr. Parrott:

Mr. Parrott: I just, if Your Honor please, I just want to clear up one or two questions. I am not certain whether

those questions have been covered. If they have, why all right.

Q. The tip that you received upon which you acted, and under which you made this seizure and search, and the subsequent arrest, I will ask you now whether that was based upon a tip or phone call that you received from the sheriff's department of Kent County, Michigan?

Mr. Grettenberger: I object to that as being incompetent.

The Court. Objection sustained.

Mr. Parrott: Exception.

Officer Bos who just testified did not call me on December 10th, and tell me he had received a tip over the phone with respect to this car in question, and I did not base my [fol. 46] arrest, nor my search and seizure of this car upon what officer Bos had told me.

Q. Or any one else in the sheriff's Department of Kent County, Michigan?

Mr. Grettenberger: I object to that as being incompetent.

The Court: Objection sustained.

Q. Just one more question. Did any member of the Sheriff's Department of Kent County, Michigan, apprise you or any of your assistants on December 10th that a car of liquor was coming in on M-16 and describing a Graham-Paige, the car in question here, and that upon that call you acted?

Mr. Grettenberger: I object to that as being incompetent, and has been gone over for a half a dozen times.

The Court: Objection sustained.

Mr. Parrott: Exception.

That is all, Your Honor.

Mr. Grettenberger: That is all.

The Court: Any further testimony?

Mr. Parrott: That is all on the part of the defense, if Your Honor please.

Mr. Grettenberger: Government rests.

Colloquy Between Court and Counsel

The Court: The testimony is closed. Do you wish to discuss this question?

Mr. Parrott: I wish to renew my motion, if Your Honor please, and I wish to add to my motion on the ground of the language used in the Carroll case, the syllabus at 16—I will withdraw that.

If Your Honor please, I add to my motion as a ground for my motion, the fact that the evidence shows that officer Scully at the time he was lifting up the coverlid, as he said according to the record, that he was not sure that the liquor was under there, but he verified it after he got the car back down to their property, where they made the search. I am using the language of a ruling case for this kind of cases. We are confident that the evidence in this case does not come at all within the province of the Carroll case, because if Your Honor please will notice, at 16, the syllabus of the Carroll case, that it was a sequence of actions upon which the reporter in that case predicate that part of the syllabus. What does he say?

[fol. 47] (Reading) "Officers engaged in patrolling—etc."

There is nothing in the record in this case, nor is it contended that Grand Rapids and its environs have been used to transport contraband liquor or that this car in question actually did go over any roads that the Court might see fit by reason of former convictions to conclude were places where contraband liquor was being hauled. It is not contended nor is it in the record that this case comes within the purview of this syllabus, although Counsel cites the Carroll case in support of his contention.

Here is some more of the sequence of actions, as stated in the syllabus: "—and which same car was tried to be used a short time before," and "it was a known source of liquor supply."

The record in this case is absolutely barren of any evidence as to where this liquor came from, who brought it here, except that Dick Husty got in the car after it was here, and it is immaterial that the officers were not looking for evidence at the time, and that the liquor was concealed. But all these conditions that I have just named were the conditions upon which the Court predicated its opinion, and upon which the reporter who write that syllabus naturally predicated that part of the syllabus. Counsel quotes that as his authority. Now I am going to quote Your Honor the law in this case, on the evidence in this case, and it is not the Circuit Court of Appeals' opinion, it is

that of the Chief Justice of the United States and his associates, the Supreme Court of the United States speaking: "Whenever a felony has been committed, either in the presence of an officer, or as to which the officer has a belief based on reasonable grounds--" Reasonable grounds, what are his reasonable grounds? He had a tip, he won't disclose it, he won't say, he won't give any evidence by which this Court or Counsel can decide in their own mind whether it was reliable. Does Court or Counsel have to depend purely upon what is in the mind of the witness, to verify his honest belief, or his honest intentions as to what constitutes "reasonable grounds"?

Can a witness override the Constitution of the United States, the Fourth Amendment? I believe Your Honor recognizes that is the paramount law of the land, and no man by his evidence can contravene its provisions. We stand here helpless, he simply comes and says he believes it, and he won't say why he believed it, he won't tell us the names of the parties from whom he received [fol. 48] it to know whether they constitute a reliable source to verify his belief. No, "I am bigger than the Constitution of the United States of America, and I can sit here and with utter abandon state that I have an honest belief, and you have no standard to measure me by."

But, If Your Honor please, the people who write the Constitution made an example of such people as that, and they said "We cannot allow you to over-ride the Constitution." How are we ever going to get justice, if we cannot get from a witness, after the Supreme Court has said it must be based on reasonable or honest belief, based on reasonable grounds? How are we going to measure that honest belief, if we cannot get any evidence from him as to the source of his information, to let us know whether the parties from whom he got it are of good repute or otherwise. Can he sit there and override the Fourth Amendment of the Constitution?

The Court: Of course, the witness did not refuse to give the name, the Court ruled that he should not give it, and as I understand it, that is the trend of all of the authorities. If you have any authorities to the contrary the Court may change its ruling, but up to the present time, I know of no such. The witness has not refused, the Court has declined to permit him to answer.

Mr. Parrott: I don't want the man's name, I want evidence in this case to show to the Court whether his honest belief which he claims to have is justified or not, that is my point. He merely says that he was justified, because he had been given a couple of complaints and he acted upon them. I don't think that is sufficient in this case. The Supreme Court has held that it is not sufficient, it has got to be an honest belief based on reasonable grounds. He did not have an honest belief when he went there, because he said when he got to the back of the car, he admitted he lifted up the coverlid of the compartment, and he was not sure then until he got back to the garage, and the record will show it. He cannot get down to the next floor of this building, in his office and ascertain whether there was liquor in that car. Your Honor is no doubt perfectly familiar with cases, not only in Michigan, but other cases as reported in the reports. Now here is the Kamhout case, coming right in the State of Michigan. What do they say in that case as to what is the law of the land, and the law of the State of Michigan? An officer acting upon information apparently so reliable that a prudent and careful person having due regard for the rights of others; and Dick Husty, having expiated his for-
[fol. 49] mer crimes, had as good a right to expect to be safeguarded with respect to his person and property as any one else, the law looks upon him as having expiated his crimes—(citing) "having due regard for the rights of others, would act thereon, they have reasonable and probable cause to believe that intoxicating liquor is being unlawfully transported in an automobile in their presence," then an officer may arrest the offender and search for contraband liquor.

Now that is a Michigan case.

I wish, Your Honor, before passing on this question—Your Honor is no doubt familiar with the Render (?) case, if Your Honor would just look over the syllabus in that case before deciding.

The Court: You may give me the citation of the cases upon which you rely, and I am perfectly willing to review them.

(Mr. Parrott here cites cases.)

The Court: I will dispose of this motion sometime today or tomorrow. The Court will take a recess.

Grand Rapids, Michigan, March 12, 1930.

Appearances: Mr. Fred Wetmore, United States District Attorney, and Mr. Louis H. Grettenberger, Assistant U. S. District Attorney, on behalf of the Government: Mr. Percy Parrott, Attorney on behalf of Respondents.

The Court: In the case of United States vs. Richard Husty and Charles Laurel, Respondents, are the parties ready?

Mr. Grettenberger: Government's ready.

Mr. Parrott: Yes, Your Honor.

The Court: Are both respondents in the Court room?

Mr. Parrott: One of them is present. Mr. Husty went out to bring a witness down who had no other way of getting down here quickly.

The Court: Do not proceed with calling the jury.

(After a few minutes Respondent Richard Husty entered the Court room.)

The Court: Mr. Clerk, you may call the Jury.

Mr. Parrott: If Your Honor please, might I interrupt? I have filed three motions: can we dispose of them before the jury is called?

The Court: I have read the three motions, and each will be denied. You may have an exception.

[fol. 50] Mr. Parrott: I want an exception.

The Court: You may have an exception as to each.

(Jury called.) (Jury sworn on first oath.)

Mr. Grettenberger: May it please the Court, and gentlemen of the jury: This case involves the violation of the National Prohibition Act by one Richard Husty and Charles Laurel. Mr. Richard Husty is from Grand Rapids, Charles Laurel I believe is from Detroit, or the vicinity of Detroit. Are there any members of this jury that are acquainted with Mr. Husty?

(Jury examined further.)

(Jurors examined by Counsel for Respondents.)

Mr. Grettenberger: Government is satisfied with the jury.

Mr. Parrott: If Your Honor please, we are satisfied for cause and peremptorily.

The Court: Mr. Clerk, you may swear the jury.

(Jury sworn.)

The Court: Mr. Grettenberger, I presume this case will require the remainder of this afternoon?

Mr. Grettenberger: I believe so, Your Honor.

OPENING STATEMENT BY MR. GRETTENBERGER

May it please the Court——

Mr. Parrott: If Your Honor please, may I, at this time, for the purpose of the record, renew my motion on my petition to suppress? I also wish to object to any introduction of the testimony, and ask for the return of the goods found, by reason of their inadmissibility.

The Court: The record will so show, and the motion will be overruled, and you may have an exception.

Mr. Parrott: Thank you.

If the Court please, I would like to have the record show that I renew my motion at this time for a separate trial of these defendants.

The Court: The motion will be denied.

Mr. Parrott: Exception.

The Court: You may have an exception.

By Mr. Grettenberger: May it please the Court, and gentlemen of the jury, as I stated briefly before examining you, this case involves the violation of the National Prohibition Act as amended. The indictment returned by the grand jury in this case contains two counts, Count 1 is a transportation count, and sets up that on the 10th day of December 1929 in the City of Grand Rapids in this County, County of Kent, these Respondents transported in an auto- [fol. 51] mobile, a Graham Paige coupe, a certain amount of spirituous liquor, to wit: Whiskey.

Count 2 is a possession count, which alleges that on the same day these respondents possessed in the City of Grand Rapids whiskey, and in addition to the possession of this whiskey it is alleged in this indictment that it is the third offense against one of the Respondents, Richard Husty. The Government will introduce evidence in this case on the two counts, from which it will be shown that on this 10th day of December, 1929, these two respondents in the City

of Grand Rapids, over the highways of the city of Grand Rapids were transporting and were possessing intoxicating liquor, namely whiskey.

The Government calls as its first witness Mr. Scully.

ARTHUR Q. SCULLY, being first duly sworn by the Clerk of the Court, on behalf of the Government, testified as follows:

Direct examination.

By Mr. Grettenberger:

I am the Deputy Prohibition Administrator for this District and have been such since 1926. I had occasion to make the arrest of Respondents Richard Husty and Mr. Laurel in this case on December 10th, 1929, at about 8 P. M., that was in the evening. They were in the vicinity of Jefferson Avenue and Pleasant Street in this city, southeast, when I arrested them; they were in a Graham-Paige coupe at the time I arrested them.

Q. And what else, if anything?

Mr. Parrott: Objection, he has not indicated anything else.

The Graham-Paige coupe was parked on the east side of Jefferson Avenue, about 150 feet from Pleasant Street, north.

Q. And where were these two men?

Mr. Parrott: Objection; at what time, if Your Honor please?

At the time I arrested Mr. Laurel he had got out of the automobile and ran into an alley. Mr. Husty was arrested right at the car; he was sitting behind the wheel just stepping out, I think. I saw them get into the automobile pre- [fol. 52] vious to my arresting them. After they got into the automobile, Mr. Husty got in behind the driver's wheel, Mr. Laurel also got in the seat, it was only a one-seat coupe; there was also a third man; Mr. Husty started the motor and started to pull out into traffic or on to the street and just as he started to move, I imagine he moved his car about two or three feet, a very short space, I pulled the Government car over in front of him and stopped him.

After I stopped them, Mr. Laurel and the other man got out of the Graham-Paige and ran. I looked in the car at that time, I did not make a thorough search at that time, that is, I did not count the liquor, I found something in the car, and noticed that it was a quantity of whiskey. I later searched more thoroughly for the amount of whiskey, which was eighteen cases and one quart. These little cars filled with bags full of something, and these bottles, are the liquor that was taken from this automobile.

(Bottle handed up, marked on label Gov. Exh. A.)

Q. What kind of liquor did you find there in the car?

Mr. Parrott: Objected to; he is not qualified.
The Court: You may inquire if he knows.

I know what kind of liquor I found there in the car and it was a Canadian liquor; whiskey. Government Exhibit A is one of the bottles I found, and I have examined the contents in this car here, this No. 1 here, I have examined every particular bottle. I have gone through to find out and it is all whiskey, and also the same contained in these sacks. After having made the arrest of Mr. Husty, I searched his person.

Q. What did you find if anything?

Mr. Parrott: That is objected to.
The Court: I will take the answer.
Mr. Parrott: Exception.

I found $960.00 in cash and two checks and that is about all that I can recall.

Mr. Parrott: I move to strike the answer out.
The Court: The answer will stand.
Mr. Parrott: Exception.

I made inquiries from Mr. Husty as to what he was going to do with that money.

[fol. 53] Q. What did he say?

Mr. Parrott: Objection, Your Honor.

A. Mr. Husty——

The Court: I will take the answer.
Mr. Parrott: Exception please.

Mr. Husty refused to make any statement regarding the money, and made no statement at all other than his age and the regular statement for the report of the case. Mr. Laurel made some statements to me and told me that he did not know or had not known Mr. Husty till the afternoon of that day, that he came over from Detroit in this car that was seized, that Graham-Paige; that he did not know the liquor was in the car, and that he didn't know who the man was — escaped, but that man was the same man that came over from Detroit with him. Mr. Laurel was the one that tried to escape that night.

Mr. Grettenberger: At this time I would like to offer in evidence Government Exhibit A, and all this liquor here in these two cars, which Mr. Scully has described as being that which he found in the car in question.

The Court: It will be received.

Mr. Parrott: May the record show that it is all objected to, and objected to because the witness is still on the stand.

Mr. Grettenberger: You may take the witness.

Mr. Parrott: No cross-examination.

Ray W. Harring, being first duly sworn by the Clerk, on behalf of the Government, testified as follows:

Direct examination.

By Mr. Grettenberger:

During December of this year part of the time I was in Grand Rapids, and my business during that month was that of a prohibition agent. Previous to December 10th I had been such approximately two years. I was present the night that Mr. Scully made the arrest of Mr. Husty and Mr. Laurel. I saw Mr. Laurel on that night in the alley, about 25 feet from the car, the Graham-Paige car, at the head of the alley. Mr. Husty was behind the wheel, just getting out of the Graham-Paige. About ten minutes [fol. 54] after I saw Mr. Husty at the car I noticed they had something in that car that night. This evidence here

predicated, according to this evidence entirely upon what they found in the automobile after search.

The Court: Your motion then, as I understand it, is substantially a renewal of the motion that you made yesterday?

Mr. Parrott: With the variations that I have just given.

The Court: Your motion will be denied, and you may have an exception.

Mr. Parrott: Exception.

The Court: You may proceed with the opening statement.

Mr. Parrott: May I have just a minute, Your Honor, to decide upon the policy? (After a short pause in the proceedings.) I would like to call Mr. Scully.

Mr. Grettenberger: You are calling him as your witness?

Mr. Parrott: I am calling him as my witness, but by virtue of him being a government witness and necessarily adverse, I want the privilege to cross-examine.

Mr. Grettenberger: I object to it, and I think it is an improper way of calling a witness. He should call him as his own witness.

The Court: I think he has announced that he is calling him as his own witness, and Mr. Scully will take the stand.

Arthur Q. Scully recalled to the stand.

Examination by Mr. Parrott:

I testified in this case before on a petition to suppress the evidence.

Q. And when you searched this car, will you tell us whether you searched it with a search warrant?

Mr. Grettenberger: I object to that as being incompetent, immaterial at this time.

The Court: Objection sustained.

Mr. Parrott: Exception.

[fol. 57] Q. By virtue of what did you search the car in which you found the liquor is in evidence.

Mr. Grettenberger: I object to that as calling for an answer on the same ground as the question to which objection has already been sustained.

The Court: Objection sustained.

Q. Did you search this car and secure this liquor, Mr. Scully, after you had received a tip-off through your office?

Mr. Grettenberger: I object to that as incompetent and immaterial.

The Court: I think I shall sustain the objection. I think I shall say to the jury that under the law that has prevailed in this Court for a number of years, the question of the legality or illegality of searches is a question for determination by the Court at some time prior to the actual commencing of the trial. It is law that is well understood and is well settled, and the question of the legality of this search was brought before the Court for hearing yesterday, testimony taken on both sides, and the question fully disposed of.

I am saying that to you so you will understand why the Court rules as it does. The question has been disposed of in the usual and regular and only proper way it could be disposed of, and further questions along that line, of course, will be improper.

Mr. Parrott: Exception.

That is all, Mr. Scully.

The Court: The Court will take a recess for ten minutes.

(Recess of approximately ten minutes was had at this time.)

Mr. Parrott: If Your Honor please, the defense will rest at this time.

The Court: Defense rests?

Mr. Parrott: Defense rests.

Mr. Grettenberger: We rest.

The Court: How long a time do you wish for argument in this case?

Mr. Grettenberger: About five minutes, Your Honor, I think.

The Court: Will five minutes on each side be sufficient?

[fol. 58] Mr. Parrott: That is sufficient.

The Court: You may proceed.

(Argument by Mr. Grettenberger, and argument by Mr. Parrott, rebuttal argument by Mr. Grettenberger.)

Mr. Parott: If the Court please, I would like the record to show that the last statement of counsel is prejudicial.

CHARGE TO JURY

The Court: Gentlemen of the Jury: It is an offense against the laws of the United States to transport upon the streets or highways of the city of Grand Rapids, or of the State of Michigan, or any of the streets or highways of the country, intoxicating liquor. It is also an offense against the laws of the United States to possess intoxicating liquor. The indictment returned by the Grand Jury in this case contains two counts, the first count of which charges that on or about the 10th day of December, 1929, at the city of Grand Rapids these Respondents, Richard Husty and Charles Laurel did unlawfully transport over and upon the public highways of the County of Kent, and the streets of the city of Grand Rapids, — an automobile, to wit, a Graham-Paige coupe, certain intoxicating liquor, namely whiskey, which liquor then and there contained one-half of one per cent and more of alcohol by volume. The second count of the indictment is what is called a possession count, and in that count these respondents are charged on the same date with the unlawful possession of intoxicating liquor, namely whiskey, and it is also charged in the second count that this offense constitutes a third offense, so far as the Respondent Richard Husty is concerned.

So it is the claim of the Government that these Respondents have violated in two particulars the laws of the United States.

Now the law presumes these Respondents to be innocent of the offenses charged against them in this indictment and throws around them the protection of that presumption, and the burden rests upon the Government to establish by evidence and beyond a reasonable doubt each and every essential element of the offenses charged against the Respondents and to negative each and every reasonable hypothesis of their innocence. This burden remains upon the Government throughout the case, and there is no burden resting upon Respondents to establish their innocence. It will be your duty as jurors to commence your deliberations with the presumption of their innocence uppermost in your [fol. 59] minds, and to continue your deliberations with

that presumption uppermost in your minds until you become convinced of their guilt by the evidence in the case and beyond a reasonable doubt.

By a reasonable doubt is meant exactly what the term implies, namely, a doubt for which there is a reason. The reasonable doubt which will prevent a juror from voting for conviction is and it must be a real and a substantial doubt as distinguished from a merely possible or imaginary one; it must be a fair and an honest doubt, as distinguished from a merely captious or capricious one; it must be a doubt which grows out of the evidence in the case, and is based upon reason and common sense, and not a doubt which grows out of or is based upon bias, or prejudice or sympathy. If any juror has such a reasonable doubt as to the guilt of these Respondents, he will have no right to vote for conviction; on the other hand, no juror has the right arbitrarily and without reason to say that he has such a doubt and thereupon refuse to convict. If you have such a reasonable doubt as to the guilt of Respondents, it will be your duty to acquit them; on the other hand, if you have no such reasonable doubt it will be equally your duty to convict them.

I think it will be unnecessary for the court to review the claims of the parties in this case. It is sufficiently stated in the indictment, and in that connection I shall say that by the plea of not guilty which has been entered in this Court by the Respondents, they, of course, deny their guilt of the offenses charged.

I may say that if you find from the evidence of the case beyond a reasonable doubt as I have defined it, that the Respondents were knowingly transporting liquor upon the streets of the City of Grand Rapids, it would then be your duty to convict. I should perhaps say with reference to Respondent Laurel, that it does not appear that he was actually at the steering wheel; the car, it appears from the evidence was being driven by Respondent Richard Husty. In that connection I shall call your attention to Section 332 of the Criminal Code of the United States, which provides as follows: "Whoever directly commits any act, constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal." In other words, if you find from the evidence in this case that the Respondent Charles Laurel

was aiding and assisting knowingly in the transportation of intoxicating liquor, you will be justified, provided you [fol. 60] find that fact to be true beyond a reasonable doubt, as I have defined it, you will be justified then in finding Charles Laurel guilty of the offense charged.

There has been some evidence in this case of an attempted flight upon the part of Charles Laurel. Flight in and of itself is not conclusive evidence of guilt. It is, however, a fact which the jury has the right to weigh and consider in connection with all of the evidence of the case as indicating a consciousness of guilt.

Now you are the sole judges of the credibility of the witnesses, it is for you to determine who has told the truth. You will give to the testimony of each witness such weight and credence as you believe it is entitled to, and in weighing and measuring the testimony of each and every witness you have a right to take into consideration his appearance upon the witness stand, the reasonableness of the story which he has told, take into consideration any motive which he may have had for testifying falsely, and any interest which he may have in this prosecution or its outcome. It will then be your duty to determine the testimony which is true and that which is untrue, and when you have made that determination you will discard and disregard the testimony which you find to be untrue and reach a verdict based upon all the evidence in the case which, under all the circumstances, you believe to be true.

Now these Respondents are here on trial upon two separate and distinct charges, what are known as two separate counts in the indictment. You will have the right to convict the Respondents upon both counts of the indictment, or to acquit upon both counts of the indictment, or to convict upon one count of the indictment and acquit upon the other counts, depending upon your view of the testimony. You have the right, of course, to acquit either of the Respondents upon either of the counts, and to convict either of the Respondents upon either of the counts, as you view the testimony.

If you convict the Respondents upon both of the counts in the indictment, that is, if you convict both of the Respondents upon both of the counts of the indictment your verdict will be "We find Respondents guilty as charged."

If you acquit Respondents upon both of the counts in the indictment, your verdict will be "We find Respondents not guilty." If you convict the Respondents upon one count of the indictment and acquit upon the other, you will indicate by your verdict the count upon which you convict and the count upon which you acquit, bearing in mind that Count 1 [fol. 61] of the indictment charges the offense of unlawful transportation, and Count 2 of the indictment the offense of unlawful possession. Of course, if you convict one of the Respondents and acquit the other upon either of the counts, you will so indicate by your verdict, naming the Respondent convicted and the Respondent acquitted, as well as the count or counts upon which you acquit or convict.

Mr. Clerk, you may swear an officer.

Mr. Parrott: If Your Honor please, I would like to have one or two things charged to the jury if I may, before they retire.

The Court: I think the officer may be sworn, and after the jury has retired, if you wish to take exceptions to the charge, the Court will consider your requests and recall the jury for further instructions, if they are well taken.

You may swear an officer.

(Officer sworn.)

REQUESTS TO CHARGE

Mr. Parrott: Exceptions generally.

I request the Court to charge: "If you find from the evidence that the arresting officer made the search of the automobile in which the liquor was found without a warrant, and if you also do not find from the evidence that the arresting officer from the exercise of his own senses, or acting upon information received from sources apparently so reliable that a prudent and careful person, having due regard to the rights of others would act thereon, and has reasonable and probable cause to believe that intoxicating liquor is being unlawfully transported in this particular automobile in his presence, then you will return a verdict for the defendants."

I request that the Court direct the jury to return a verdict for the defendants on the ground that they have not been proven guilty beyond a reasonable doubt.

I think that is all.

The Court: The Court will take a recess.

(Recess period.)

(In the absence of the Court, and in the absence of the Jury, the following request was dictated by Counsel for Respondents:

"If you find from the evidence that the arresting officer discovered the liquor after the arrest, and did not—if you do not further find from the evidence that the arresting officer from the exercise of his own senses or acting upon information received from sources apparently so reliable that a prudent and careful person having due regard to the [fol. 62] rights of others would act thereon, and had reasonable and probable cause to believe that intoxicating liquor was being unlawfully transported in an automobile in his presence, then your verdict will be for the defendants."

(At this point the jury returned to the Court room, before the last request could be brought to the attention of the Court.)

(Foreman, upon inquiry from the Clerk, announced verdict of "Both Respondents guilty on both counts.")

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Grettenberger: May it please the Court, may Respondents be remanded in the custody of the Marshal?

The Court: Yes, Respondents will be remanded to the custody of the Marshal.

The Court will take a recess at this time.

(Recess.)

(During recess the final request of Counsel for Defendants was read to the Court.)

The Court: The Jury was in the Court room, of course, before the Court was informed of that request? I think the record should show that the request was dictated in the absence of the Court, during recess, and in the absence of the jury.

Proceedings of March 14, 1930—2:30 p. m.

Mr. Parrott: May I be heard at this time?

The Court: Yes, you may proceed.

Mr. Parrott: This motion is filed, if Your Honor please, by reason of the fact that the Reporter was not present last evening when I took exception to the Court's sentence of the Defendants Husty and Laurel. I believe without any further argument upon this phase the motion should be granted.

Mr. Grettenberger: What motion do you have reference to?

Mr. Parrott: The motion which I have handed to the Court, the motion with reference to granting counsel exceptions to the Court's sentencing, and to the penalty of the sentence, and I want it to appear as a matter of record that an exception is taken in the language contained in the motion.

The Court: I shall have to say that I don't remember that particular exception having been made after the imposition of sentence. I might not have heard just what was going on, do you recall, Mr. Grettenberger?

Mr. Grettenberger: My best judgment is that the whole exception that he now has indicated in his petition or mo-[fol. 63] tion was not made at the time. I recall no such language. That is my impression also.

Mr. Parrott: If Your Honor please, that is more or less correct. Your Honor stopped counsel. We discussed the question somewhat of why the reporter was not here, and I was rather estopped from asserting the latter part of my exceptions by reason of that fact. I would have included that all, if the Court had not entered into the discussion as to why I did not have my reporter here.

The Court: I suggested to you, I think at six o'clock last night that you should, of course, have a reporter here, if you desired to note exceptions. I think that was the language that took place at that time. It probably was too late at that time to procure a reporter.

Mr. Parrott: I thought I had a right to assume that he would stay as long as matters were before the court.

The Court: This other situation, I think, is conclusive upon the matter of a motion, that is that I think this court loses all control over the case when once appeal is allowed.

Mr. Parrott: On the alternative part of it I think that is correct.

The Court: I think I shall deny the motion.

Mr. Parrott: Does Your Honor deny both sections?

The Court: Yes.

Mr. Parrott: Exceptions please.

The Court: You may have your exceptions.

Mr. Parrott: Exception as to both grounds made in the motion and for all reasons therein alleged.

The Court: The Court will take a recess at this time.

(Recess period.)

(During Recess period and in the absence of the Court, and of counsel for the Government, Mr. Parrott, Attorney for Respondents dictated the following on the record: "You have it where I made reference to my three motions, before the trial? I want the record to show that they were a demurrer, motion to quash, and motion for separate trial. I mentioned the motion for separate trial later in the case. Just indicate on the record that the three motions referred to were demurrer, motion to quash, and a motion for separate trial.")

[fol. 64] IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

The exceptions taken upon said trial are hereby settled at the request of Counsel for defendant by the consent of the District Attorney, which contains the substance of all the testimony given upon said trial which in any manner affected the exceptions herein noted in so far as the testimony set out by questions and answers it is done because I deem it necessary for a full understanding of the questions raised by this appeal.

Dated this 4th day of April, A. D. 1930.

Fred M. Raymond, District Judge.

O. K. L. H. Grettenberger, Assistant United States District Attorney. P. F. Parrott, Attorney for Respondent.

Filed April 4th, A. D. 1930.

In United States District Court

Præcipe for Transcript of Record—Filed March 29, 1930

To the Clerk:

Please prepare transcript of record in the above entitled cause for the United States Circuit Court of Appeals and include therein the following papers and orders:

Indictment.
Plea of Defendant, Richard Husty.
Plea of Defendant, Charles Laurel.
Petition to Suppress and Return Evidence.
Rule to Show Cause upon Petition to Suppress and Return Evidence.
[fol. 65] Finding of the Court upon Petition to Suppress and Return Evidence, and order denying.
Demurrer.
Motion to Quash.
Motion for a Separate Trial.
Verdict of the Jury.
Sentence of the Court.
Alternative Motion.
Motion for a New Trial.
Assignment of Errors.
Petition for Appeal.
Order allowing Appeal.
Bond on Appeal.
Citation.
Bill of Exceptions on Petition to Suppress and Return evidence, and upon trial.
Motion for judgment non obstante veredicto.
Motion for Settlement Bill of Exceptions.
Order denying motion in part.
Application for a Settlement of Bill of Exceptions.
Certificate of the Clerk Authenticating the Record and Designation of Contents of Record.

P. F. Parrott, Attorney for Richard Husty and Charles Laurel.

[fol. 66] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 67] Appearances of counsel omitted in printing.

Minute entry of argument and submission June 11, 1930, omitted in printing.

[fol. 68] IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

JUDGMENT—Filed June 28, 1930

It appearing (1) that the search was reasonable and the motion to suppress properly denied; (2) that the indictment was good and that it was not necessary to make reference therein to the so-called Jones Law; (3) that it was proper upon the trial to exclude evidence as to the reasons for the search,—that subject matter having been foreclosed by the decision of the motion to suppress; (4) that the sentence was supported by conviction on the second count; (5) and that the other errors alleged are not well taken—

Ordered that the judgment and sentence of the court below as to each appellant be and is hereby affirmed. Let the mandate issue forthwith.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 69] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 24, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,399. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 477. Richard Husty and Charles Laurel, petitioners, vs. United States of America. Petition for a writ of certiorari and exhibit thereto. Filed September 26, 1930. File No. 35,399.